रजिस्ट्री सं० डी० 221 REGISTERED No. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 46] नई दिल्ली, सोमवार, नवम्बर 9, 1970/कार्तिक 18 1892 (शक)
No. 46] NEW DELHI, MONDAY, NOVEMBER 9, 1970/ KARTIKA 18, 1892(SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following report of the Select Committee on the Bill further to amend the Constitution of India was presented to Lok Sabha on the 9th November, 1970:—

COMPOSITION OF THE COMMITTEE

Shri D. K. Kunte—*Chairman*

MEMBERS

2. Shri C. K. Bhattacharyya
3. Shri Kanwar Lal Gupta
4. Shri Shiva Chandra Jha
5. Shri K M. Koushik
6. Shri V. Krishnamoorthi
7. Shri K. Hanumanthaiya
8. Shri Srinibas Mishra
9. Shri S. N. Misra
10. Shrimati Sharda Mukerjee
11. Shri K. Ananda Nambiar
@12. Shri A. S. Saigal

*Appointed w.e.f. 31st July, 1970 in the vacancy caused by the death of Shri P Govinda Menon.

@Died on 17th September, 1970.

13. Shri Ebrahim Sulaiman Sait
14. Shri A. K. Sen
15. Shri Tenneti Viswanatham
16. Chaudhuri Randhir Singh

LEGISLATIVE COUNSEL

Shri A. K. Srinivasamurthy, *Deputy Legislative Counsel, Legislative Department, Ministry of Law.*

REPRESENTATIVE OF THE MINISTRY OF LAW

Shri Dalip Singh, *Deputy Legal Adviser, Ministry of Law.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

REPORT OF THE SELECT COMMITTEE

I, the Chairman of the Select Committee to which the Bill* further to amend the Constitution of India was referred, having been authorised to submit the report on their behalf, present their Report with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 21st February, 1969. The motion for reference of the Bill to a Select Committee was moved by Chaudhuri Randhir Singh, M.P. on the 27th February, 1970 which was discussed and adopted on the same day.

3. The Committee held nine Sittings in all.

4. The first sitting of the Committee was held on the 11th March, 1970 to draw up their programme of work. The Committee at this sitting decided that a Press Communique be issued inviting Bar Councils, Supreme Court|High Court Bar Associations, Public bodies, Chambers of Commerce, Individuals etc. desirous of submitting their suggestions|views or of giving evidence before the Committee in respect of the provisions of the Bill to furnish memoranda thereon for their consideration by the 5th May, 1970. The Committee specifically invited the comments of the State Governments, Administrations of the Union Territories, Attorney General of India, Advocates General of all States, Supreme Court of India, High Courts, Bar Councils|Bar Associations and some important Legal Societies|institutes on the provisions of the Bill for the benefit of the Committee.

5. Thirty-eight Memoranda|Representations|Comments on the Bill were received by the Select Committee from different parties including State Governments/Associations/Individuals.

6. At their second sitting held on the 11th May, 1970, the Committee decided to hear the evidence of some Constitutional experts and eminent jurists. Accordingly, at their third, fourth and fifth sittings held on the 21st, 22nd July and 1st August, 1970 respectively, the Committee heard their evidence. On the 8th & 9th September, 1970 a Sub-Committee, appointed under Rule 263(1) of the Rules of Procedure and Conduct of Business in Lok Sabha, heard Shri H. M. Seervai, Advocate-General, Maharashtra, and Shri N. A. Palkhivala, Senior Supreme Court Advocate on the provisions of the Bill in the Council Hall, Bombay.

7. The Report of the Committee was to be presented by the first day of the Monsoon Session *i.e.* 27th July, 1970. As this was not possible, the Committee at their fourth sitting held on the 22nd July, 1970, decided to ask for extension of time for presentation of their Report upto last day of the next Session. Necessary motion to that effect was moved and adopted in the House on the 28th July, 1970.

8. The Committee have decided that the evidence given before them and the Sub-Committee and also the verbatim record of the proceedings

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 21st February, 1969.

of their Seventh Sitting held on the 12th October, 1970 should be printed and laid on the Table.

9. The Committee have also decided that a set of Memoranda|representations etc. received from various associations|organisations|State Governments etc. should be placed in Parliament Library for reference by the Members.

10. The Committee considered the Bill clause-by-clause at their sittings held on the 12th and 13th October, 1970.

11. The Committee considered and adopted this Report on the 6th November, 1970.

12. The observations of the Committee with regard to the changes proposed in the Bill are detailed in the succeeding paragraphs.

13. *Clause* 2.—The Committee feel that the objective of the amendment sought to be made by this clause to Article 32 of the Constitution would be served best if the word 'merely' is inserted after the word 'Court'. By addition of this word it will be necessary for the Court to consider the writ petition on merit. It will have to see some reasons, other than delay, for rejecting a writ petition for the enforcement of a fundamental right. The clause has been amended accordingly.

14. *Clause* 3.—So far as this clause is concerned, the Committee feel that it should be made specifically clear that the amendment sought to be made would cover only those writ petitions which relate to the enforcement of the fundamental rights enshrined in Part III of the Constitution. The clause, as it exists in the Bill, if enacted would apply not only to the writ petitions for the enforcement of such rights but also to the writ petitions for 'any other purpose' as envisaged under Article 226 of the Constitution. In order to clarify this position and to bring the clause in consonance with the Statement of Objects and Reasons appended to the Bill it has been provided therein that no remedy under this article, in so far as it relates to Part III, shall be denied by a High Court to any petitioner merely on the ground of delay. The clause has been amended accordingly.

15. *Clause* 1.—Amendment to this clause is of a drafting nature.

16. *Enacting Formula.*—The amendment made to the Enacting Formula is also of a drafting nature.

17. At this stage the Committee would like to observe that they are in agreement with the opinion expressed by Mr. Justice K. S. Hedge in Tilok Chand Motichand *v.* H. B. Munshi (1969) 2 S.C.R. 824 when he says—

> "The fear that forgotten claims and discarded rights may be sought to be enforced against the Government after lapse of years, if the fundamental rights are held to be enforceable without any time limit, appears to be an exaggerated one. It is for the party who complains the infringement of any right to establish his right. As years roll on his task is bound to become more and more difficult. He can enforce only an existing right. A right may be lost due to an earlier decision of a competent court or due to various other reasons. If a right is lost for one reason or the other there is no right

to be enforced, ...Let us take for example a case of a person who is convicted and sentenced to a long period of imprisonment on the basis of a statute which had been repealed long before the alleged offence was committed. He comes to know of the repeal of the statute long after the period prescribed for filing appeal expires. Under such a circumstance according to the decision of Bachawat and Mitter, JJ. he will have no right—the discretion of the Court apart—to move this Court for a writ of *habeas corpus*..... Should this Court, an institution primarily created for the purpose of safeguarding the fundamental rights guaranteed under Part III of the Constitution, narrow down those rights? The implications of this decision are bound to be far reaching. It is likely to pull down from the high pedestal now occupied by the fundamental rights to the level of other civil rights....."

17. The Committee recommend that the Bill, as amended be passed.

NEW DELHI;
November 6, 1970.
Kartika 15, 1892 (*Saka*).

D. K. KUNTE,
Chairman,
Select Committee.

Bill No. 2A of 1969

THE CONSTITUTION (AMENDMENT) BILL, 1969

(AS REPORTED BY THE SELECT COMMITTEE)

[*Words underlined indicate the amendments suggested by the Committee, asterisks indicate omissions.*]

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Constitution (Amendment) Act, 1970.

(*2*) This Act shall come into force at once.

Amendment of article 32.

2. In article 32 of the Constitution, after clause (*2*), the following * clause shall be inserted, namely:—

"(2A) No remedy under this article shall be denied to any petitioner by the Supreme Court merely on the ground of delay.".

Amendment of article 226.

3. In article 226 of the Constitution, after clause (*2*), the following * clause shall be inserted * *, namely:— 10

"(*3*) No remedy under this article in so far as it relates to Part III shall be denied to any petitioner by a High Court merely on the ground of delay.".

S. L. SHAKDHER,

Secretary.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1971